



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG-2020-0216]

RIN 1625-AA01

Anchorage Grounds; Cape Fear River Approach, North Carolina

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the anchorage regulations for Lockwoods Folly Inlet, NC, and adjacent navigable waters, by establishing a new offshore anchorage, relocating the existing explosives anchorage, and amending the anchorage regulations. The purpose of this rule is to improve navigation and public safety by accommodating recent and anticipated future growth in cargo vessel traffic and vessel size that call on Military Ocean Terminal Sunny Point and the Port of Wilmington, North Carolina.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0216 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Lieutenant Gregory Kennerley, Sector North Carolina, U.S. Coast Guard; telephone (910) 772-2230, email Gregory.M.Kennerley@uscg.mil; or Mr.

Matthew Creelman, Waterways Management Branch, Fifth Coast Guard District, U.S.

Coast Guard; telephone (757) 398–6230, email Matthew.K.Creelman2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 8, 2020, the Coast Guard published a notice of inquiry in the Federal Register (85 FR 27343) to solicit public comments on whether we should initiate a rulemaking to establish an anchorage ground offshore in the approaches to the Cape Fear River, North Carolina, and relocate the existing Lockwood’s Folly Inlet explosives anchorage. After receiving favorable comments, the Coast Guard decided to propose the rulemaking. On August 17, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) in ***Federal Register*** (86 FR 45936) and invited comments on our proposed anchorage. After considering comments made on the NPRM, the Coast Guard issued a supplemental notice of proposed rulemaking (SNPRM) in Federal Register (87 FR 17047) on March 25, 2022. There we stated why we issued the SNPRM and invited comments on our revised proposed anchorage regulation. During that comment period that ended April 25, 2022, we received one comment.

III. Legal Authority and Need for Rule

The legal basis and authorities for this rule are found in 46 U.S.C.70006, 33 CFR 1.05-1, DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage grounds.

This rule is necessary to accommodate recent and anticipated future growth in

cargo vessel traffic and vessel size that call on Military Ocean Terminal Sunny Point and the Port of Wilmington, improve navigation and public safety, and to preserve areas traditionally used for anchoring.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our SNPRM published March 25, 2022. That comment requested that we consider revising the regulatory language used to describe the anchorage coordinates in order to aid cartography and comprehension. The comment recommended revising paragraphs (a)(1) and (a)(2) by removing text reading, “The waters bound by a line connecting the following points:”, and replacing it with, “The corner coordinates of the anchorage follow:”. The Coast Guard agrees with this recommendation and the intent to assist cartography. The revision has been implemented into the regulatory text at the end of this rulemaking, all other regulatory text remains the unchanged.

This rule formally establishes an anchorage ground, Anchorage A, approximately eight nautical miles southwest of the Oak Island Light. This rule also increases the size and relocates Lockwoods Folly Inlet explosives anchorage to adjacent Anchorage A on its western boundary; and renames it Anchorage B. The specific coordinates for these anchorage grounds are included in the regulatory text at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant

regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and historical vessel traffic data pertaining to the anchorage locations. The regulation designates and preserves an approximately 22 square mile deep water area traditionally used by cargo ships for anchoring near existing traffic lanes. It also relocates the existing explosives anchorage approximately five nautical miles further offshore, increasing separation distances between vessels laden with explosives and the public, and expands its size from approximately five to seven square miles. This regulatory action provides for commercial vessel anchorage needs, while enhancing the navigation safety, environmental stewardship, and public safety.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to use the anchorages may be small entities, for the reasons stated in section IV. A above, this rule would not have a significant economic impact on any vessel owner or operator. The towns and communities along the Cape Fear River approaches have an economy based on tourism and numerous small entities and businesses. The establishment of Anchorage A and Anchorage B will increase controls over vessels that currently anchor in the general

vicinity and increase the distance between anchored vessels and the shore and beaches, lessening impacts these small entities may currently experience.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175,

Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing an anchorage ground, Anchorage A, in an area traditionally used by cargo ships for anchoring in the approaches to the Cape Fear River, NC; and increasing the size of and relocating the Lockwoods Folly Inlet explosives anchorage to an area adjacent to Anchorage A (on its western boundary), expanding its use, and renaming it Anchorage B. It is categorically excluded from further review under paragraph L[59(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 70006, 70034; 33 CFR 1.05-1;

Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.170 to read as follows:

§ 110.170 Cape Fear, NC.

(a) The anchorage grounds. All coordinates in this section are based on the World Geodetic System (WGS 84).

(1) *Anchorage A.* The corner coordinates of the anchorage are:

Table 1 to paragraph (a)(1)

Latitude	Longitude
33° 47' 59.09" N	78° 14' 58.67" W
33° 47' 59.09" N	78° 06' 24.74" W
33° 46' 01.22" N	78° 06' 24.74" W
33° 46' 01.22" N	78° 14' 58.67" W

(2) *Anchorage B.* Explosives Anchorage. The corner coordinates of the anchorage follow:

Table 2 to paragraph (a)(2)

Latitude	Longitude
33° 47' 59.09" N	78° 17' 14.00" W
33° 47' 59.09" N	78° 14' 58.67" W
33° 46' 01.22" N	78° 14' 58.67" W

33° 46' 01.22" N

78° 17' 14.00" W

(b) *Definitions.* As used in this section-

Cargoes of particular hazard means “cargo of particular hazard” as defined in §126.3 of this title.

Class 1 (explosive) materials means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

Dangerous cargo means “certain dangerous cargo” as defined in §160.204 of this title.

U.S. naval vessel means any vessel owner, operated, chartered, or leased by the U.S. Navy; and any vessel under the operational control of the U.S. Navy or Combatant Command.

(c) *General regulations.* (1) Vessels in the Atlantic Ocean near Cape Fear River Inlet awaiting berthing space within the Port of Wilmington shall only anchor within the anchorage grounds defined and established in paragraph (a) of this section, except in cases of emergency.

(2) Vessels anchoring under circumstances of emergency outside the anchorage areas shall be shifted to new positions within the anchorage grounds immediately after the emergency ceases.

(3) Vessels may anchor anywhere within the anchorage grounds provided such anchoring does not interfere with the operations of any other vessel at anchorage; except a vessel may not anchor within 1,500 yards of a vessel carrying or handling dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials. Vessels shall lie at anchor with as short of a chain or cable as conditions permit.

(4) Prior to entering the anchorage grounds, all vessels must notify the Coast Guard Captain of the Port Sector North Carolina (COTP) via VHF-FM channel 16.

(5) No vessel may anchor within the anchorage grounds for more than 72 hours

without the prior approval of the COTP. To obtain this approval, contact the COTP via VHF-FM channel 16.

(6) The COTP may close the anchorage grounds and direct vessels to depart the anchorage during periods of severe weather or at other times as deemed necessary in the interest of port safety or security.

(7) The COTP may prescribe specific conditions for vessels anchoring within the anchorage grounds, including but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on selected radio frequencies.

(d) *Regulations for vessels handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials.* This paragraph applies to every vessel, except U.S. naval vessels, handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials.

(1) Unless otherwise directed by the Captain of the Port, each commercial vessel handling or carrying dangerous cargoes, cargoes of a particular hazard, or Class 1 (explosive) materials must be anchored within Anchorage B of paragraph (a)(2) of this section.

(2) Vessels requiring the use of Anchorage B of paragraph (a)(2) of this section must display by day a red flag (Bravo flag) in a prominent location and by night a fixed red light. In lieu of a fixed red light, by night a red flag may be illuminated by spotlight.

Dated: 14 June 2022.

S. N. Gilreath,
Rear Admiral Lower Half, U.S. Coast Guard,
Commander, Fifth Coast Guard District.

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